

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **October 15, 2007**

Time: **9am** Place: East Building, Behind Capitol
Seagull Rm., So. of cafeteria

Members

Commission Members

xChair, Glen W. Roberts, *Utah Cnty* xDavid M. Lattin, *Salt Lake Cnty*
xCanyon W. Anderson, *Davis Cnty* xGarry M. Goodsell, *Iron Cnty*

Department Staff

(Attendees = x)

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	Darrel Powell <i>Dir. Market Conduct</i>	xMark Kleinfield <i>Admin. Law Judge</i>
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xGerri Jones <i>MC Examiner</i>	xSheila Curtis <i>MC Examiner</i>	xJilene Whitby <i>PIO/Recorder</i>
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Public

R. Curt Webb	David Moore	Clayton Hansen	Brian Coleman
Cort Ashton	Bob Rice	Cory Clayson	Jess Jensen
Jeff Williams	Brad Tibbitts	James Seaman	Jeff Wiewr

MINUTES

- I. **Welcome and Introductions** / Glen Roberts, Chair - 9:05AM
- II. **Adoption of Minutes of Previous Meeting**
The minutes of the September meeting were approved unanimously without change.
- III. **Review & Concur with Licensee Report**
Garry made the **motion** to concur with the Licensee Report and ~~Garry~~[?] seconded it. The vote was unanimous in favor of the motion.
- IV. **Number of Cases Open & Closed**
Sheila noted that one case could have multiple violations. The Commission discussed whether or not to eliminate some of the closed cases based on the date they were closed and decided to continue the report as is. Garry made a **motion** to concur with the report, Glen seconded it and the vote was unanimous in favor of the motion.
- V. **Review & Concur with Enforcement Case Report**
 - Christine K Ashdown, E-Case #2042, an agent of Integrated Title Services LLC. She provided a \$1,000 credit to a buyer/borrower on the escrow and title fees due the title agency. Mark recommended a fine of \$2,000 to be paid within 30 days and a probation of 24 months. Integrated Title was also fined \$1,000 for the same violation. They were not aware of the violation until the department brought it to their attention. They have agreed to the fine. They have since changed how they train their personnel. Canyon made a **motion** to approve the recommendations, Garry seconded it and the vote was unanimous. Glen signed the Order.
 - Canyon asked about the Millcreek case. Mark said a new stipulation had been issued and they can now sign or oppose it.
- VI. **Old Business**
 - **Vote on Rule R592-6**

- Canyon expressed support for split closings. Rule allows for customary and fundamental procedures. He thought split closings may have reduced losses. They require coordination and the rule and form will help with that.
- Garry said he did not support the rule and form. He did not think that the problems with split closings were surfacing to the point of enforcement. His concerns were that:
 - buyers may not be aware of the \$250 to \$300 price break;
 - buyers are often not involved in the decision making process; and
 - sellers do not have control of the funds in a split closing.

Garry did not want to legitimize the practice. Real estate practice needs to be amended. The rule is designed to help title companies retain a certain percentage of the market. It doesn't help the consumer.

- Glen said the purpose of the rule was to give organization to a split closing. *Exception by Glen*
~~about a "cash buyer" was slipped in.~~ The rule allows flexibility to change the form.
- David made a **motion** to accept the rule and instructions. Canyon seconded it. Two voted For and two voted Against the motion. The rule was tabled until the next Commission meeting or until the Governor appoints a new commission member to break the tie in the vote.
- Curt commented that there was no statute against split closings. The rule gives structure to them. He didn't think there would be enough support to eliminate them legislatively. If you don't like the structure provided by the rule then revise it.

- **Free Leads for Loans - Setting a Limit?**

Put with discussion of R590-153.

→ ● **Consumer Protections in a Split Closing.** *Exception by Canyon*
~~No one knew what this dealt with.~~

VII. **New Business** *why it was an agenda item.*

- **Rewriting of R590-153 Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business**

- Section 4: Garry suggested putting the definitions in alphabetical order.
 - Section 5, Subsection:
 - A. Okay.
 - B. Okay.
 - C. **Motion** by Canyon to change the outline of the rule to follow that of the Utah Code, and to create subsections to "C." as follows:
 - C. Furnishing escrow services pursuant to Section 31A-23a-406:
 - (1) for charge less than the charge filed pursuant to Section 31A-19a-209(5); or
 - (2) for the filing....
- The motion was seconded by Garry and the vote unanimous.
- D. **Motion** by Canyon to add, "...subject of rates or escrow charges on file (or filed) with the commissioner," which was seconded by David and the vote was unanimous.
 - E. **Motion** by Canyon to change wording to, "...including [~~"holding for resale"~~] but not limited to simultaneous transactions." The motion was seconded by Garry. Glen made the **motion** to copy the definition of "simultaneous transaction" from Bulletin 2007-5 and put it into the Definition section of this rule. The motion was seconded by Garry and the vote was unanimous.
 - F. Okay
 - G. Okay
 - H. Okay
 - I. Okay
 - J. Okay

- **K. Motion** by Canyon to reference both R592-5 and 31A-2-405 at the end of this subsection. Garry seconded the motion and the vote was unanimous.
- L. Okay
- M. "Cosponsoring" should be hyphenated. Discussion regarding "Hole in One Golf Tournaments." Gerri expressed concern about give-aways being more valuable than the cost of the game. How can vacations and fishing trips, etc, be regulated? They violate the intent of the rule. Perri said Subsections M and V seem to contradict one another. She suggested adding a reference to R590-153-6.A. in "M" and the reference to R590-153-5 in "V." The **motion** to approve these changes was made by Canyon and seconded by David with a unanimous vote.
- **N. Motion** by Canyon to place Subsection E after C.
Glen made the motion to eliminate all references to Section 5 or 6 in either section except in the first paragraph of each section. Garry seconded the motion and the vote was unanimous.
- O. Okay
- P. David made the **motion** to delete P, Canyon seconded it and the vote was Unanimous.
- Q. Glen made the **motion** to move the wording in Q after G, David seconded it and the vote was unanimous.
- R. Canyon made the **motion** to delete R, Glen seconded it and the vote was unanimous. David Moore thought R and Subsection R590-153-6.A. were inconsistent.
- S. Okay
- T. Okay
- Canyon made the **motion** to move the wording in Subsection R590-153-6.B.2. to a new subsection after T. The wording at the end, "except as allowed under R590-153-6(B)(3)," should be deleted. David seconded the motion and the vote was unanimous.
- U. Canyon made the **motion** to move this subsection to the end of Section 5, Garry seconded it and the vote was unanimous.
- V. Glen made the motion to move V to Section 6 after Subsection C and rewrite in a positive nature. Take out "and" after subsections 1 and 2. David seconded the motion and the vote was unanimous.
- A new subsection after V should read:
"A donation may not be made to a charitable organization created, controlled or managed by a client.
- W. Canyon made the motion to add:
"...other business entities, including Section 1031 qualified intermediaries, or may not" Garry seconded the motion and the vote was unanimous.
- Delete the reference to the rule in M of Section 5.
- **Office Sharing with Clients / Gerri**
This should be included in the discussion of R590-153.
- **Licensee Examinations / Mickey**
The issue has been corrected regarding the types of questions asked on title exams. David Moore, responding to a question from Canyon, noted that the pass/fail ratio differs from test to test and if the test is being taken the first or second time. Stats are provided during the exam review process in July. Title licensees are invited to be a part of that process.
- **What is the Commission's position regarding the sponsoring of holes at golf tournaments where the profits go entirely to charity?**
This should be discussed with R590-153.

- **Title Assessment / Mickey**

Mickey provided a spreadsheet of the title assessment process and reviewed it. He asked that they approve the 2008 and 2009 fiscal year assessment. The previous year is projected into the next year to determine the amount. \$5,200 is appropriated from the General Fund to support the Commission. Any unused assessment income is carried forward to the next fiscal year. The statute authorizes the department to annually assess up to \$75,000. The assessment is used for Gerri's salary and benefits, travel and car rental expenses, office expenses, office and computer equipment. Sheila is not paid by the assessment; she is a General Fund employee. The assessment is approved as part of the department's budget each year. The amount of the assessment could be increased to pay for an additional person if the Commission recommended it and the statute were changed. An increase to the assessment would need to be added to the 2009 assessment. Canyon made the **motion** to approve the budget for FY 2008 and 2009.

- **Exemption from the 3 year Licensure/Experience Requirement**

Clayton Hansen and Brian Coleman, representatives from Attorney's Title, stated that the department had no process to apply for the experience exemption referred to in 31A-23a-204. Attorneys would be glad to fill out forms or submit any information needed. Mickey offered to have the department provide a rule draft with the help of Attorney's Title. This topic should be put on next meetings agenda.

- **Revisions to Bulletin 2007-5, Prohibited Split Escrows**

- o Glen noted that a member of the industry requested cash closings in a transaction. If the rule is passed this will be covered.
 - o Canyon said the Commission should also consider the use of closing protection letters (CPL) and insured closing letters (ICL). The question is, "Are they a title policy and are they allowed by law?" When a transaction is split you have two transactions then you must have all three pieces of the transaction. The law requires an owners or buyers policy.
 - o "Transaction" needs to be defined. Counsel has said it is two transactions. Canyon thought a transaction would have to either have an ICL or a policy. This would provide protection to the consumer. Perri said that one or more of the following must be a part of the transaction. The department sees each side of split as an individual transaction. Glen asked if a rule could be written to define "transaction?" Perri said it could. Mickey said that if the Commission wants to define a transaction as both sides of a split then we would not oppose it. If it is defined that way, then Bulletin 2007-6 will no longer be needed.
 - o A CPL cannot be defined as a policy. Canyon proposed underwriters be contacted to see if they would provide draft of a CPL. Does a transaction include a CPL?
 - o Many at the meeting were unaware of Bulletin 2007-5 and wondered if it should be taken off the department's website. Garry did not think it should. A bulletin is not a rule. Mickey said that now that it has been made public, the department must enforce it until it is changed or the interpretation is changed. Perri said legislation would solve the problem. Garry agreed.
 - o Glen asked that this be put on next month's agenda. Commission member's were requested to contact underwriters for a draft of a CPL.
- Next agenda – definition of Transaction."

Break at 10:45AM for 15 minutes.

VIII. **Other Business from Committee Members**

Glen reported that applications to replace Curt Web's remaining term on the Commission were on the Governor's desk. They are new applications.

X. **Adjourned:** 12:40PM

XI. **Next Meeting** November 19, 2007, 9a.m.

Next Meeting

9:00 a.m.

November 19, 2007

December 10, 2007